

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
	§	
ALAN TODD MAY and PROSPER OIL & GAS, INC. a/k/a PROSPER ENERGY, INC.	§	Civil Action No.: 3:10-CV-0425-L
	§	
	§	
	§	
Defendants.	§	
	§	

**SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION’S APPLICATION FOR PRELIMINARY INJUNCTION**

Plaintiff Securities and Exchange Commission (“Commission”) submits this supplemental brief in further support of the preliminary injunction that the Commission has requested in this action.

1. On March 2, 2010, the Commission filed a complaint and *ex parte* application for a TRO and other emergency and preliminary relief against Defendants Alan Todd May (“May”) and Prosper Oil & Gas, Inc. a/k/a Prosper Energy, Inc. (“Prosper”). The Commission sued defendants for running a fraudulent oil-and-gas offering scheme by selling investors royalty interests and paying them “returns” on those interests with other investors’ money rather than revenue from oil-and-gas production.

2. On March 3, 2010, the Court granted the Commission’s request for a TRO and other emergency relief in its *Ex Parte* Order Freezing Assets and Granting TRO and Other Emergency Relief (the “Order”). [Doc. No. 10]. The same day, Prosper and May were served with

the complaint and summons in this action, as well as a copy of the Order and all other documents then on file with the Court.

3. In the Order, the Court entered a TRO against Defendants and set the Commission's request for a preliminary injunction for a hearing on March 15, 2010 at 2:00 p.m.

4. With the memorandum of law that the Commission filed in support of its *ex parte* motion for TRO and other emergency and preliminary relief [Doc. No. 5], the Commission provided the Court with an appendix of evidentiary support for the allegations in its motion for preliminary injunctive relief. [Doc. No. 8]. With this brief, the Commission submits another Appendix with additional such evidentiary support (hereinafter cited as "App."). It consists of sworn declarations with supporting materials from Ty S. Martinez, an accountant on the Commission's staff, Dawn Dandridge, Prosper's former Controller, and Jon Pope, an investor who purchased royalty interests from Prosper.

5. Prosper's former Controller acknowledges that May and Prosper ran a *Ponzi* scheme. From November 2009 through March 3, 2010, when Prosper was placed into receivership, Ms. Dandridge worked at the company as Controller. [App at 7 ¶ 1]. She has an accounting background, and was responsible for processing royalty income that Prosper received from oil-and-gas producers as well as issuing the distribution checks that Prosper sent to investors as "royalty payments." [App. at 7,8 ¶¶ 2, 4].

6. In November and December 2009, Prosper received approximately \$120,000 in royalty income, but paid out to investors approximately \$225,000 in "royalty payments." [App. at 9 ¶ 8; App at 11-12 (Ex. A)]. According to Ms. Dandridge, Prosper used investor funds to make up the difference between the royalty income it received and the payments it made to

investors. [App at 9 ¶ 8]. She believes that, as a matter of course, Prosper used investor funds to make “royalty payments.” [Id.].

7. Based on additional bank records that the Commission has reviewed since it filed its complaint, and on additional information it has gathered about Prosper’s business affairs, the company received a total of \$440,000 in revenue from royalty interests, but paid investors a total of \$1,210,000 in “royalty payments.” [App at 3 ¶ 5]. Prosper and May made up the difference between royalty revenue and investor distributions with funds from other investors. [Id.].

8. Jon Pope invested approximately \$141,500 with May and Prosper. [App at 16 ¶ 3]. Mr. Pope received approximately \$20,000.00 in royalty payments from Prosper. [App at 17 ¶ 4]. May told him that the source of the royalty payments he received from Prosper was royalty income from oil-and-gas production. [Id.]. May never told Mr. Pope that part or all of the payments he received from Prosper came from funds that Prosper collected from other investors, or from any source other than oil-and-gas revenue. [Id.].

9. The evidence the Commission has submitted in support of its application for a preliminary injunction establishes a *prima facie* case that Prosper and May committed securities fraud, as well as a likelihood that their violations will continue absent further injunctive relief. A preliminary injunction, therefore, is appropriate.

10. On March 8, 2010, the Commission noticed the depositions of May and the corporate representative of Prosper. Neither May nor a Prosper representative appeared at the time designated for their testimony. A declaration from the court reporter evidencing their failure to appear is included in the Appendix. [App at 23-24].

11. The Court ordered May and Prosper to file any response to the Commission's application for preliminary injunction no later than March 10, 2010. Neither May nor Prosper filed a response.

12. The Commission submits a proposed order granting preliminary injunctive relief with this supplemental brief.

Dated: March 12, 2010

Respectfully submitted,

/s/ Toby M. Galloway

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th of March, 2010, I served this *Supplemental Brief In Support of Plaintiff Securities and Exchange Commission's Application for Preliminary Injunction* on all adverse parties by causing a true and correct copy thereof to be sent via U. S. Mail addressed to Alan Todd May's last known address, as follows:

Alan T. May
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Prosper Oil & Gas, Inc. a/k/a Prosper Energy, Inc.
By and Through Alan T. May
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/s/ Toby M. Galloway
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